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SUBJECT: SUBJECT: AMBASSADOR-AT-LARGE WILLIAMSON WARNS
ICTY THAT RUSSIA MAY MAKE TRIBUNAL ISSUES MORE DIFFICULT

Classified By: DENISE G. MANNING, LEGAL COUNSELOR, REASON(S) 1.4(B) AND
(D)

--- SUMMARY: AMB. WILLIAMSON HAS SUCCESSFUL VISIT WITH ICTY
OFFICIALS ---

¶1. (SBU) On September 16, 2008, Ambassador-at-large for War Crimes Issues Clint Williamson met separately with the International Criminal Tribunal for the former Yugoslavia (ICTY) President Fausto Pocar, Prosecutor Serge Brammertz, and Registrar Hans Holthuis. The meetings were successful, with Williamson delivering a clear message that hard times might lay ahead for the ICTY as a result of worsening relations with Russia. Williamson also received updates on ICTY activities, including case scheduling, the ICTY's \$30 million supplementary budget request, and the latest developments in the Karadzic trial.

--- COPING WITH THE NEW RUSSIAN REALITY ---

¶2. (SBU) USG Warning of Tough Road Ahead. Ambassador Williamson delivered a clear message in all his ICTY meetings: that the U.S.,s and the West,s deteriorating relations with Russia could spill into ICTY issues. Williamson explained that the USG is concerned that Russia will be more difficult on a wide range of issues, including the ICTY supplementary budget request and proposals to continue certain ICTY activities after the ICTY,s closure ("Residual Issues"). Williamson stated that France and the United Kingdom shared these concerns. Williamson also noted that the Chinese appear to be sending signals that they too will be more difficult. While assuring ICTY officials of continuing USG support, Williamson warned ICTY officials that they would need to be mindful of the new political realities in their thinking and planning (including with respect to their supplementary budget request and any Residual Issues proposals). He also indicated that the ICTY needs to prepare for worst-case scenarios.

¶3. (C) Tribunal Responses to Warning. ICTY officials took these warnings on board, and had a range of reactions. Pocar responded by differentiating among the ICTY proposals requiring Security Council action, noting first that he did not think Russia would block his proposal to extend judicial terms, because Russia "can,t stop ongoing trials." With respect to Residual Issues, he speculated that when the Belgian chairmanship of the U.N.,s Working Group on Tribunals ended in December, the Russians might seek to move back to a monthly rotating chairmanship, resulting in a slow down of the Residual Issues work. In response to concerns about a Russian reaction, Brammertz asked Williamson if he had gone to Moscow to discuss Tribunal issues; Brammertz said his own trip to Moscow earlier this summer had gone well.

(Brammertz met with Foreign Minister Sergei Lavrov, who asked about the Completion Strategy, and in particular whether it was possible to send remaining cases to the region for trial.

Lavrov also noted the Haradinaj acquittal and allegations about KLA organ trafficking stemming from Carla del Ponte's book. Brammertz described Lavrov as very proper but said he took a firm line regarding Russian expectations on the ICTY completing its work.) The discussion with Holthuis centered around the early October visit of the Security Council's Working Group on Tribunal Issues, and in particular, whether the Russians would be on that visit. (Comment: The Russian representative did come.) Holthuis also indicated that he hoped that the Registry would be providing the Working Group within a couple of weeks with financial scenarios on the Residual Issues, and it was suggested that the Working Group should receive such information before its visit to the ICTY.

(Comment: At a subsequent meeting with Registry Officials, Embassy officers were told that OLA had a bootleg copy of a preliminary financial scenarios paper, but that the paper does not cost out the various needs that it projects, but instead provides personnel numbers. Registry staff did not comment on possible Russian reactions to the supplementary budget, but noted that Russia is fully paid up on its assessed contributions.)

--- TRIAL SCHEDULING REMAINS ELUSIVE ---

14. (SBU) Trial Completion and Scheduling. Holthuis indicated that four trials are likely to extend into 2010: Prlic, Tolimir, Djordjevic and Zupljanin. (Comment: Karadzic will clearly extend into 2010 as well, as should Perisic, which is predicted to take 24 months.) Pocar did raise concerns about the schedule, including expressing frustration at UNSC delay

in extending the ad litem judges. Pocar explained that due to this delay, he did not have a bench for the Perisic trial, scheduled to begin on October 1. Pocar also noted his October 14th UNGA speech would need to address trial status, and consequently, he may need to report trial delay because the mandate for ad litem judges had not been extended.

(Comment: The start of the Perisic trial was in fact delayed by one day, until the ICTY had received official confirmation that the UNSC had adopted a resolution extending judicial tenures. Note, however, that the tenures of the permanent and ad litem trial judges were extended until December 2009. Since some trials, including Perisic, will most likely extend beyond that date, further UNSC action will eventually be required.)

15. (C) ICTR Delays Create Looming Appeals Crisis? Pocar also expressed concern about a possible Appeals Chamber crisis in 2009 and 2010. Pocar claimed that the ICTR is "misbehaving" in that it has not issued any judgments recently. ICTR handed down its last judgment in December 2007, he said, and 17 judgments are still pending. Pocar expressed concern that this will cause an appeals log-jam next year. He indicated that it is not clear how this issue should be dealt with, speculating that the Appeals Chamber may need to be expanded or a second Appeals Chamber created -- a move, he noted, that might risk destroying the cohesion of the case-law.

--- ICTY MAKES \$30 MILLION SUPPLEMENTARY BUDGET REQUEST ---

16. (C) The Supplementary Budget. According to the Prosecutor and Brammertz, the ICTY recently sent a supplementary budget request, for \$30 million, to New York. Apparently, the supplementary budget would postpone the scheduled 2009 downsizing to 2010, retaining all personnel who were tentatively slated for cuts. Holthuis stressed that the supplementary budget was necessary because they are still running at full steam with the arrival of four new fugitives, including Karadzic, Zupljanin, Tolimir and Djordjevic, noting that they continue to run the same number of trials and will do so for some time into the future. After some pressure from Ambassador Williamson, however, both Brammertz and Holthuis admitted that the ICTY had a Plan B if their supplemental budget request was not accepted. (Comment:

Pocar did not mention a "Plan B", and Brammertz and Holthuis did not provide details on the "Plan B". However, in a separate conversation, Pocar,s Chef de Cabinet advised Embassy Officer that Pocar,s Plan B was to transfer additional cases to the region.)

--- DEVELOPMENTS IN THE KARADZIC TRIAL: TIMING, THE BENCH, AND PRO SE ASSISTANCE ---

16. (C) Conversations with ICTY officials revealed information on the timing for the Karadzic trial, on-going speculation about the future trial bench, the efforts to amend the indictment, and the establishment of a new pro se office within the Registry. With respect to timing, ICTY officials seemed in general agreement that the Karadzic trial would start by the middle of next year, perhaps before Brammertz indicated he thought the trial would take about 18 months. (Comment: According to a draft trial calendar seen at a subsequent registry meeting, however, the Karadzic trial was marked as potentially starting next fall, after the conclusion of the Gotovina case.) As to the trial bench, Qconclusion of the Gotovina case.) As to the trial bench, currently only the Pre-Trial Chamber has been appointed. Pocar explained that he wants three permanent judges on the Trial Chamber, in part to avoid the need for extensions of ad litem judges. (Comment: Although the ICTY President appoints the Trial Chamber, Pocar may not be making that decision if he steps down as expected in November.) Brammertz appears to believe that Judge Bonomy will be on the bench, but an Embassy source indicated that this has not been decided. Regarding the Karadzic indictment, the OTP stated that they have been working "day and night" to file a motion proposing revisions to the 11-count indictment, which they expect to complete by September 22 at the latest. They indicated that the revisions were intended to create a stronger and leaner indictment, which would include cutting the number of municipalities and reducing the timeframe on the shelling of Sarajevo. Additionally, in revising the indictment, the Prosecution would also be taking into account adjudicated facts. (Comment: The motion to amend the indictment, which was filed September 22 and is on the ICTY website, did cut the number of affected municipalities by approximately 1/3, from 41 to 27. It also proposes two new counts: it split the existing single counts of genocide into

two (to cover different localities and times) and also added a count of unlawful attacks on civilians.) Brammertz indicated that the OTP had separately begun reviewing the indictments of the two remaining fugitives, Mladic and Hadzic, so they would not be caught in the same predicament again. With respect to the pro se office, Holthuis also advised that the Registry has set up an office dedicated to pro se issues, from which he expected Karadzic and the other pro se defendants to benefit. According to Holthuis, a similar office had been used during the Milosevic trial.

--- COMMENTS: VISIT PROVIDED EXCELLENT OPPORTUNITY TO CHANGE TONE OF DISCUSSION AND EXPECTATIONS ---

17. (C) Ambassador Williamson,s visit provided an excellent opportunity to change the tone of discussions regarding Residual Issues and address ICTY,s expectations in this respect. Having earlier received a copy of a comprehensive Belgian draft security council resolution regarding Residual Issues, ICTY sources, both with the Registry and Chamber, had high expectations with respect to Residual Issues. The Embassy believes Ambassador Williamson,s visit assisted in tempering ICTY expectations. Culbertson